

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

MICHAEL DAVID ARMSTEAD,

Petitioner,

v.

**Civil Action No. 2:06 CV 47
(Maxwell)**

DOMINIC A. GUTIERREZ, SR.,

Respondent.

ORDER

It will be recalled that on May 10, 2006, *pro se* Petitioner Michael David Armstead, a federal prisoner incarcerated at FCI-Morgantown in Morgantown, West Virginia, instituted the above-styled civil action by filing an Application for *Habeas Corpus* pursuant to 28 U.S.C. § 2241.

It will further be recalled that the case was referred to United States Magistrate Judge James E. Seibert in accordance with Rule 83.09 of the Local Rules of Prisoner Litigation Procedure.

After conducting an initial screening and review, United States Magistrate Judge James E. Seibert entered an Order on June 7, 2006, directing the Respondent to show cause why the Petition should not be granted. The Respondent's Response To Show Cause Order was filed on July 6, 2006. Thereafter, on July 11, 2006, a July 9, 2006, letter to the Court from the Petitioner alleging that the Respondent had failed to timely file a response to his Petition was docketed as a Motion For Default Judgment.

On July 27, 2006, United States Magistrate Judge James E. Seibert issued a Report And Recommendation on Petitioner's Motion For Default Judgment wherein he recommended that said Motion be denied in light of the fact that the Respondent had filed a timely response to the Court's Show Cause Order.

In his Report And Recommendation, Magistrate Judge Kaul provided the Petitioner with ten (10) days from the date of said Report And Recommendation in which to file objections thereto and advised the Petitioner that a failure to timely file objections would result in the waiver of his right to appeal from a judgment of this Court based upon said Report And Recommendation.

The Court's review of the docket in the above-styled action has revealed that no objections to Magistrate Judge Seibert's July 27, 2006, Report And Recommendation have been filed by the Petitioner and that this matter is now ripe for review.

Upon consideration of Magistrate Judge Seibert's July 27, 2006, Report and Recommendation, and having received no written objections thereto¹, it is

ORDERED that the Report And Recommendation entered by United States Magistrate Judge James E. Seibert on July 27, 2006, be, and the same is hereby, **ACCEPTED** in whole. Accordingly, it is

ORDERED that the Petitioner's Motion For Default Judgment (Docket No. 6) be, and the same is hereby, **DENIED**.

The Clerk of Court is directed to transmit a copy of this Order to the *pro se*

¹The failure of a party to objection to a Report And Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

Petitioner and to counsel of record for the Respondent.

ENTER: March 13, 2007


United States District Judge